

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

GRIDDDY ENERGY LLC,¹

Debtor.

)
) Chapter 11
)

) Case No. 21-30923 (MI)
)
)
)

**DEBTOR'S EMERGENCY MOTION TO FILE UNDER SEAL
CERTAIN CUSTOMER DATA CONTAINED IN EXPERT
REPORT AND DECLARATION OF TONY W. SPENCER**

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 7, 2021 AT 3:00 PM (CT) IN COURTROOM 404, 4TH FLOOR, 515 RUSK ST., HOUSTON, TX 77002. IT IS ANTICIPATED THAT ALL PERSONS WILL APPEAR TELEPHONICALLY AND ALSO MAY APPEAR VIA VIDEO AT THIS HEARING.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 832-917-1510. YOU WILL BE RESPONSIBLE FOR YOUR OWN LONG-DISTANCE CHARGES. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE ISGUR'S CONFERENCE ROOM NUMBER IS 954554.

YOU MAY VIEW VIDEO VIA GOTOMEETING. TO USE GOTOMEETING, THE COURT RECOMMENDS THAT YOU DOWNLOAD THE FREE GOTOMEETING APPLICATION. TO CONNECT, YOU SHOULD ENTER THE MEETING CODE "JUDGEISGUR" IN THE GOTOMEETING APP OR CLICK THE LINK ON JUDGE ISGUR'S HOME PAGE ON THE SOUTHERN DISTRICT OF TEXAS WEBSITE. ONCE CONNECTED, CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF THE HEARING. TO MAKE YOUR ELECTRONIC APPEARANCE, GO TO THE SOUTHERN DISTRICT OF TEXAS WEBSITE AND SELECT "BANKRUPTCY COURT" FROM THE TOP MENU. SELECT "JUDGES' PROCEDURES," THEN "VIEW HOME PAGE" FOR JUDGE ISGUR. UNDER "ELECTRONIC APPEARANCE" SELECT "CLICK HERE TO SUBMIT ELECTRONIC APPEARANCE." SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

RELIEF IS REQUESTED NOT LATER THAN JULY 7, 2021.

¹ The last four digits of its federal tax identification number of the Debtor are 1396. The mailing address for the Debtor is PO Box 1288, Greens Farms, CT 06838.

Griddy Energy LLC, the debtor and debtor in possession in the above-captioned case (the “Debtor”), submits this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the *Order Temporarily Suspending Bankruptcy Local Rule 9037-1 Regarding the Filing of Sealed Documents*, dated January 6, 2021 (the “General Order”), authorizing, but not directing the Debtor to file certain customer data (the “Customer Data”) included in Exhibit 1 of the *Expert Report and Declaration of Tony W. Spencer* (the “Spencer Report”) filed contemporaneously with the Motion pursuant to the procedures outlined in the General Order under seal.² In compliance with the General Order, the Debtor will file a redacted copy of Exhibit 1 of the Spencer Report and will serve copies of this document on (i) counsel to the Official Committee of Unsecured Creditors (the “Committee”); (ii) the United States Trustee; (iii) the Court; and (iv) any other parties as ordered by the Court. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This Court has constitutional authority to enter final orders with respect to the relief requested herein. The Debtor consents to this Court’s entry of final orders or judgments on this Motion if it is later determined that, in the absence of the consent of the parties, this Court does not have constitutional authority to enter final orders or judgments.

² Capitalized terms used but not defined herein have the meanings given to such terms in the Plan (defined below).

3. The predicates for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and the General Order.

RELEVANT BACKGROUND

A. The Chapter 11 Case

4. On the March 15, 2021 (the “Petition Date”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing in the possession of and management of its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On March 31, 2021, the United States Trustee for Region 7 appointed the Committee. As of the date hereof, no trustee or examiner has been appointed in the Debtor’s chapter 11 case.

6. On May 26, 2021, the Debtor filed the *Modified Third Amended Plan of Liquidation for Griddy Energy LLC Under Chapter 11 of the Bankruptcy Code* [Docket No. 312] (as may be amended from time to time, the “Plan”) and related disclosure statement [Docket No. 311] (as may be amended, modified or supplemented from time to time, the “Disclosure Statement”). On May 26, 2021, the Court entered an order conditionally approving the Disclosure Statement. *See* Docket No. 308. The hearing on confirmation of the Plan is scheduled to occur on July 7, 2021 (the “Confirmation Hearing”).

7. Further background regarding the Debtor and the events leading to the filing of this chapter 11 case is set forth in the *Declaration of Michael Fallquist in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 21] (the “First Day Declaration”).

B. The Spencer Report

8. On June 29, 2021, the Court entered an order [Docket No. 357] approving the Debtor's application [Docket No. 344] to retain and employ Tony W. Spencer as an expert witness in connection with confirmation of the Plan and, in particular, regarding the collectability of outstanding customer receivables and related matters. As part of his engagement with the Debtor, Mr. Spencer has prepared the Spencer Report.

9. On July 2, 2021, the Debtor filed with the Court the Spencer Report. Attached to the Spencer Report as Exhibit 1 is the Customer Data, which includes, among other things, information concerning past payment amounts, past payment attempts, chargebacks, and balances owed by former customers of the Debtor. Although such Customer Data does not include personally identifiable information of any of the Debtor's former customers, subject to certain exceptions, the Debtor's privacy policies and/or privacy regulations preclude it from releasing, among other things, historical electricity usage or billing records.³ Accordingly, out of an abundance of caution, the Debtor seeks to file the Customer Data included in Exhibit 1 of the Spencer Report under seal.

BASIS FOR RELIEF

10. Section 105(a) of the Bankruptcy Code, which codifies the Court's inherent equitable powers, also empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Further, pursuant to section

³ See *Your Rights as a Customer*, GRIDDDY, https://assets.websitefiles.com/5df01ca286f5a984f50cd9e2/5e011d4c6e721834ea507357_Your-Rights-as-a-Consumer.pdf (last visited June 30, 2021) ("Except as described below, REPs may not release your proprietary customer information to any other person without your consent. This includes your name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges or billing records.").

107(b) of the Bankruptcy Code, the Court is authorized to issue orders to protect entities with respect to certain confidential or commercial information.

11. Bankruptcy Rule 9018 implements section 107(b) of the Bankruptcy Code and provides in relevant part: “On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information”

Furthermore, the General Order authorizes the Court to limit public access to certain documents.

12. Once the Court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting interested party and has no discretion to deny the application.” *In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (quoting *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994)); *see also In re Global Crossing*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (stating that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.”). Courts also have stated that commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See In re Meyrowitz*, 2006 WL 6544093, at *2 (Bankr. N.D. Tex. Oct. 27, 2006); *see also Faucett*, 438 B.R. at 568 (Bankr. W.D. Tex. 2010) (quoting *Orion*, 21 F.3d at 28).

13. Here, Exhibit 1 of the Spencer Report contains Customer Data that if disclosed could violate certain of the Debtor’s privacy policies and PUCT regulations. Accordingly, out of the abundance of caution the Debtor seeks to have the Customer Data contained in Exhibit 1 of the Spencer Declaration filed under seal.

EMERGENCY CONSIDERATION

14. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtor respectfully requests emergency consideration of this Motion. The Debtor will seek to admit the Spencer Report into evidence at the Confirmation Hearing. Accordingly, the Debtor respectfully submits that emergency consideration is warranted.

NOTICE

15. Notice of this Motion will be given to: (a) the U.S. Trustee; (b) counsel to Macquarie Energy LLC and Macquarie Investments US Inc., in their respective capacities as secured parties and/or collateral agent under the Debtor's prepetition agreements with such parties; (c) the Office of the Attorney General of the State of Texas; (d) counsel to the Committee; (e) the thirty (30) largest unsecured creditors for the Debtor; (f) the Public Utilities Commission of Texas; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor respectfully submits that such notice is sufficient under the circumstances and that no other or further notice of this Motion need be given.

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WHEREFORE, the Debtor respectfully requests that the Court enter the Order, substantially in the form attached hereto as Exhibit A, granting the relief requested in this Motion, and granting such other and further relief the Court may deem just or proper.

Dated: July 2, 2021

BAKER BOTTS L.L.P.

By: /s/ Chris Newcomb
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Counsel to the Debtor and Debtor in Possession

CERTIFICATE OF ACCURACY

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Local Rule 9013-12(i).

/s/ Chris Newcomb

CERTIFICATE OF SERVICE

I certify that on July 2, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Chris Newcomb